



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 1074-00

17 July 2000

[REDACTED]

Dear Mr. [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 11 July 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Navy on 17 November 1976 at the age of 18. Your record reflects that you served for a year and six months without incident. However, on 29 March 1978 you received nonjudicial punishment (NJP) for three incidents of failure to obey a lawful order, three periods of absence from your appointed place of duty, and two incidents of failure to go to your appointed place of duty. The punishment imposed was a \$150 forfeitures of pay and reduction to paygrade E-2. On 5 August 1978 you received NJP for two incidents of assault, two incidents of disobedience, and two incidents of failure to go to your appointed place of duty. The punishment imposed was correctional custody for 30 days, forfeitures totalling \$400, and reduction to paygrade E-1.

Your record further reflects that on 5 April 1979 you were convicted by special court-martial (SPCM) of three periods of unauthorized absence (UA) totalling 99 days, two incidents of disrespect, and five incidents of disobedience. You were sentenced to confinement at hard labor for four months, forfeitures totalling \$1,000, and a bad conduct discharge (BCD). Subsequently, the BCD was approved at all levels of review and ordered executed. On 9 October 1981 you received a BCD.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity, prior military training, and your contention that you would like your discharge upgraded because you were not properly separated under the provisions of the Pilot Program to Test Voluntary Separation Concepts dated 6 January 1977. The Board also considered your contentions of inadequate legal counsel/representation, false charges, illegal evidence, inability to provide witnesses for your defense due to ship movement, and a mental condition. However, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the serious nature of your frequent misconduct, which resulted in two NJPs, a court-martial conviction, and separation from the pilot program. Also, the Board noted that your repeated misconduct was cause of your separation from the pilot program and the program could not be used to evade prosecution for your misconduct. Further, an honorable discharge from the pilot program was not required if the record showed that separation under other than honorable conditions was appropriate. Note that we can not review court-martial convictions as to findings of guilt or legal issues. The Board noted that there is no evidence in your record, and you submitted none, to support your other contentions. Given all the circumstances of your case, the Board concluded your discharge was proper as issued and no change is warranted. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director